

franchise fees, while TCG Detroit's efforts to compete in Dearborn are substantially restricted." (Exhibit 11.)

As a result, it is clear that local municipalities are not imposing the same requirements on Ameritech Michigan as they are imposing on new providers seeking to enter the local telephone market.

*4. New Providers Must Be Given The Same Treatment As Ameritech Michigan To Ensure Nondiscriminatory Access To Poles And Rights-Of-Way*

*a. Governor Engler Recognizes The Current Treatment To Be "Discriminatory"*

Governor Engler has recognized that this imposition of local franchise fees upon new market entrants is discriminatory and deprives citizens of the opportunity to obtain competitive telecommunications services. In responding to the Mayor of Romulus' request that the Governor support efforts to change FCC rules with respect to utilization of public rights-of-way, Governor Engler wrote:

"While I certainly support state control over intrastate telecommunications issues, I am troubled by the recent discriminatory actions taken by some municipalities in Michigan. I believe communities ought to be looking for ways to attract new telecommunications companies. Instead, some are trying to circumvent Michigan law and assess illegal franchise fees. Actions taken by the City of Troy, for example, discourage investments in Michigan communities, depriving citizens of competitively priced telecommunications services." (Exhibit 12, emphasis added.)

The current circumstance where municipalities discriminatorily apply franchise fees on new market entrants significantly impairs the creation of competitive local markets.

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*b. Ameritech Michigan Admits That Such Local Regulation Is A "Competition Inhibitor"*

Even Ameritech Michigan, itself, recognizes that the application of these municipal franchise ordinances on new market entrants has an anti-competitive effect. Ameritech Michigan's Vice President of Corporate Planning, Harry Semerjian, has called the Troy Ordinance a "competition inhibitor." (Wallstreet Journal, December 23, 1996, Section A, page 7.) Thus, Ameritech Michigan recognizes that municipal franchise ordinances imposing extensive conditions and franchise fees on new market entrants inhibit the creation of competition.

*5. Significant Impediments To Competition Will Exist If New Providers Have To Comply With Extensive Local Regulations And Pay Up To Five Percent Of Their Gross Revenues To Municipalities If Ameritech Michigan Is Not Subject To The Same Regulations And Fees*

If competition in the local telephone market is to exist, new market entrants must not face onerous regulations which apply only to them, and not Ameritech Michigan. For example, in Troy, a new market entrant may have to pay up to five percent of its gross revenue as a franchise fee while Ameritech Michigan would not. Given all of the other hurdles a new market entrant must overcome, it will never be able to penetrate a local market in any significant respect if it must pay five percent of its gross revenues to the municipality while the entrenched incumbent does not. In addition to the imposition of franchise fees, new market entrants face an array of other costly franchise requirements such as providing free fiber optics and free services to the municipality. Clearly, competition will never flourish in Michigan if new entrants are hindered with discriminatory and burdensome local franchise regulation, while Ameritech Michigan is given preferential treatment.

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**6. *As A Result, The Requirement Of Nondiscriminatory Access Is Not Satisfied In Michigan***

The competitive checklist requires that within the State of Michigan new providers must have the same access to the poles, ducts and conduits and rights-of-way owned or controlled by Ameritech Michigan. The Federal Act, in relevant part, states:

"(2)(A) A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought

\* \* \*

(ii) such access and interconnection meets the requirements of subparagraph (B) of this paragraph

\* \* \*

(B) Competitive checklist.-- Access ... meets the requirements of this subparagraph if such access and interconnection includes each of the following:

\* \* \*

(iii) Nondiscriminatory access to the poles, ducts, conduits and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224." (47 USC § 271(c)(2); emphasis added.)

Within the State of Michigan, new providers do not have access to the poles and rights-of-way owned or controlled by Ameritech Michigan on a nondiscriminatory basis. Within the State of Michigan, municipalities are imposing substantial regulations and franchise fees on new providers before the new providers may have access to the poles and rights-of-way utilized by Ameritech Michigan. These municipalities are not imposing these same extensive regulations and franchise fees on Ameritech Michigan.

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It is inconsistent with the public interest, convenience and necessity to allow Ameritech Michigan to enter the in-region long distance market when such significant impediments exist for facilities-based competitors to penetrate the local telephone market. It ... cannot be seriously disputed that this disparate treatment is discriminatory and prevents competitively-priced local exchange services to be offered by facilities-based providers. (See governor Engler's letter to Mayor of Romulus, Exhibit 12.) Even Ameritech Michigan recognizes that such local regulation is "a competition inhibitor." Until new providers are treated equally with Ameritech Michigan, it is not in the public interest to allow Ameritech Michigan to enter the in-region interLATA market because significant barriers exist with respect to others penetrating its market.

**C. Ameritech Michigan Is Discriminating By Giving Preferential Treatment To Its Affiliate Ameritech NewMedia**

**1. *Initially When Cable Companies Attached To Ameritech Poles, Ameritech Required Them To Abide By The National Electric Safety Code And Incur Substantial "Make Ready" Charges***

As required by rules promulgated by the Michigan Public Service Commission, when cable companies sought to attach to Ameritech Michigan's poles, the cable companies were required to abide by the National Electric Safety Code. (See, 1988 AC, R 460.811, et seq.) As a result, cable companies were generally required to attach their cable at a distance of 18 feet above ground clearance. This often required cable companies to move the existing attachments of others to a higher level on Ameritech Michigan's poles. As a result, cable companies incurred millions of dollars of "make-ready" charges in initially attaching their cable to Ameritech Michigan poles. In addition, cable companies were not allowed to attach

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at the much preferred bottom position on the pole. Instead, this position was reserved for telephone service and cable companies were required to attach above telephone cable.

**2. *When Ameritech NewMedia Sought To Initially Attach To Ameritech's Poles, Ameritech Adopted A New And Invalid Interpretation Of The National Electric Safety Code, Thus Enabling Its Affiliates To Avoid The Expense Of "Make Ready" Charges Which Have Been Imposed On NewMedia's Competitors***

When Ameritech's cable television affiliate, Ameritech NewMedia, initially sought to attach its cable to Ameritech Michigan's poles, Michigan rules still required compliance with the National Electric Safety Code. Yet, when Ameritech NewMedia sought to attach, Ameritech Michigan applied a new, and invalid, interpretation of the National Electric Safety Code which allowed Ameritech NewMedia to attach at 15-1/2 feet. This allowed Ameritech NewMedia to attach below all the other parties on Ameritech Michigan poles to avoid the expensive "make-ready charges" which had been imposed on all other cable companies. Thus, Ameritech NewMedia has been allowed access to the preferred bottom position on the pole which had been earlier denied to other cable providers.<sup>6</sup>

As a result, Ameritech Michigan is providing discriminatory access to its poles because it is giving preferential treatment through an invalid interpretation of the National Electric Safety Code which allows its affiliate Ameritech NewMedia to attach at 15-1/2 feet and avoid substantial "make-ready" charges which have been imposed on other attaching parties. This is another example of the discriminatory access to Ameritech Michigan's poles which establishes that Ameritech Michigan is not in compliance with the competitive checklist.

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<sup>6</sup>As a result of similar activity by Ameritech in Ohio, a complaint has been filed by the Ohio Cable Telecommunications Association and others against Ameritech before the Ohio PUC, in Case No. 96-1027-TP-CSS.

**III. AMERITECH MICHIGAN'S REQUEST FOR INTERLATA RELIEF IS PREMATURE BECAUSE THERE IS NO FACILITIES-BASED COMPETITION FOR RESIDENTIAL CUSTOMERS**

**A. Track A Requires Facilities-Based Competition**

In its filing with the FCC, Ameritech Michigan claims it has satisfied the requirement to provide in-region interLATA services because it has entered into interconnection agreements with competitors and satisfied Section 271(c)(1)(A), or Track A, of the Federal Act. Track A requires the presence of facilities-based competition and requires Ameritech Michigan to show that it has entered into one or more binding agreements approved under the Federal Act under which Ameritech Michigan is providing access and interconnection to its network facilities to unaffiliated competitors providing service to both residential and business customers. Further, these competing providers must be providing such services either exclusively over their own facilities or predominately over their own facilities. Section 271(c)(1)(A), in relevant part, provides:

"A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company *is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service...to residential and business subscribers.* For the purpose of this subparagraph, *such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities . . .* (47 USC § 271(c)(1)(A); emphasis added.)

Thus, to be entitled to interLATA relief under Track A, Ameritech Michigan must show that there is facilities-based competition for both residential and business customers.

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**B. The MPSC Recognizes That There Is No, Or Virtually No, Competition, Either Facilities-Based Or Not**

While the State of Michigan has attempted to deregulate the local exchange telephone market, the MPSC has recognized that deregulation does not equal competition. As explained by Chairman Strand:

"The one thing I do know is that deregulation is not necessarily the same thing as competition and the Commission believes that basically both must go hand in hand.

A good analysis is one of the telephone industry. The telephone industry to a large extent over the last four or five or six years has been substantially deregulated; ... The only real competitive market is in the long distance interstate market and that basically only has three main players and a lot of small ones. Yet, rates in that area have declined by approximately 60 to 70 percent over the last 15 years.

Conversely, we have deregulated to a large extent in the intrastate area, but in most cases most people still only have one choice. I can tell you the stories we have heard time and time and time again of people who have said my local phone bill is muddled. We have had our rates raised locally or stayed the same locally; yet, basically decline overall on an interstate long distance basis. The result is it's cheaper in many cases to call California than it is five miles down the road." (August 6, 1996 Comments made during a Public Hearing in MPSC Case No. U-11076).

Further, in approving the application of Ameritech Communications, Inc. to provide local exchange service in MPSC Case No. U-11053, this Commission stated:

"In reaching its decision, the Commission places emphasis on the differences between the current levels of competition in the local exchange and long distance markets. *There is virtually no competition in local exchange markets at this time.* However, competition does exist in the interLATA market." (August 28, 1996 Order, p 28.)

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This Commission has recognized there is no, or virtually no, competition in the local telephone market, let alone a facilities-based competitor for both residential and business subscribers.

**C. Ameritech Michigan Has Not Shown The Existence of Facilities-Based Competition For Residential Customers**

In its filing with the MPSC, Ameritech Michigan does not establish that there is a single residential customer receiving local exchange service through a local loop owned and deployed by a competing provider. Yet, it is the local loops which are the predominant physical plant (i.e., facilities) comprising a local telephone system. Apparently, Ameritech Michigan contends that a competing provider is providing service over its own facilities to residential customers because one competing provider is purchasing unbundled loops from Ameritech Michigan and using those unbundled loops to serve a few residential customers. Such a contention ignores the fact that Congress sought to promote "meaningful facilities-based competition"<sup>7</sup> which cannot come about if service to all customers is being provided over a single set of network facilities. A definition of "facilities-based residential competition" should require a competitor's ownership and deployment of switches, trunks and some subscriber loops which are being used to serve residential customers. Such a definition promotes sound competitive policy and represents the type of extensive deployment of alternative network facilities envisioned by Congress.

In any event, the number of residential customers being provided service by competitors is so small that it is clearly inconsequential and there is no meaningful competition in Michigan. The data filed by Ameritech Michigan indicates that only 3,612

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<sup>7</sup>Federal Act's Conference Report, p 148.

residential customers are being served by competing local exchange carriers. (Ameritech Michigan's response to Attachment A in MPSC Case No. U-11104, November 12, 1996, p. 16). This number is of no consequence when compared to the nine million residents in the State of Michigan and the fact that Ameritech serves over 3.2 million residential access lines.<sup>8</sup> There is simply no competitor who is providing any meaningful residential service either exclusively over its own facilities or predominantly over its own facilities to justify Ameritech Michigan's claim that it has satisfied Track A of the Federal Act. Ameritech Michigan has not satisfied Track A and its request to be found in compliance with the competitive checklist is premature.

**D. Premature Entry Into The InterLATA Market Is A Disastrous Policy**

Section 271(c)(1)(A) of the Federal Act expressly provides that a Bell Operating Company's entry into the in-region interLATA market is contingent upon it providing access and interconnection in accordance with the competitive checklist to a facilities-based local exchange competitor that serves both business and residential subscribers. As the FCC has recognized, the Bell Operating Companies "have no economic incentive, independent of the incentives set forth in Sections 271 and 274 of the 1996 Act, to provide potential competitors with the opportunities to interconnect and make use of the incumbent LECs network services." (In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Docket No. 96-98, rel'd August 8, 1996 at ¶55). Likewise, in discussing the Senate version of Section 271 which was adopted by the Conference Committee, Senator Kerrey stated that: "The way to overcome this ability of the

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<sup>8</sup>As a result, Ameritech Michigan still serves over 99.88% of all customers in its local exchanges. While Congress did not impose a metrics test, Congress did envision "meaningful competition" before allowing the RBOCs into the long distance market.

RBOCs to thwart the open local markets is to give them a positive incentive to cooperate in the development of competition." (141 Congressional Record S8139 daily edition June 12, 1995.) Likewise, during House consideration of the Conference Report, Representative Hastert stated that: "Fair competition means local telephone companies will not be able to provide long-distance service in the region where they have held a monopoly until several conditions have been met to break that monopoly." (142 Congressional Record H1152, daily edition, February 1, 1996).

Premature entry by Ameritech Michigan into the In-region interLATA market will thwart the objective of promoting local telephone competition. Once allowed into the market, Ameritech Michigan will no longer have the same incentive to ensure that it is providing the access and interconnection to its bottle-neck facilities necessary to allow local competition to exist. If Michigan consumers are to benefit from deregulation, then the regulators must ensure that there are facilities-based competitors actually competing for residential subscribers. This clearly is not the case within Michigan and as a result Ameritech Michigan's application under Track A of the Federal Act is premature.

**IV. AMERITECH MICHIGAN'S REQUEST FOR INTERLATA RELIEF SHOULD BE REJECTED BECAUSE THE NON-ACCOUNTING SAFEGUARDS TO PREVENT ANTICOMPETITIVE CONDUCT ARE NOT FULLY IN PLACE**

**A. The FCC Admits That Further Action Is Required To Effectively Implement Section 272(e)(1)**

In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271

And 272 of the Communications Act Of 1934, as amended, The FCC released Its First Report And Order And Further Notice Of Proposed Rulemaking On December 24, 1996. In this first Report and Order, the FCC recognized the essential interplay between Sections

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271 and 272 of the Federal Act. Section 271(d)(3) requires that the FCC determine that a Bell Operating Company is in compliance with the safeguards set forth in Section 272 before granting interLATA relief. Section 271(d)(3) in relevant part states:

"Not later than 90 days after receiving an application under paragraph (1), the Commission shall issue a written determination approving or denying the authorization requested in the application for each State. The Commission shall not approve the authorization requested in an application submitted under paragraph (1) unless it finds that--

\* \* \*

(B) The requested authorization will be carried out in accordance with the requirements of section 272." (47 USC § 271(d)(3).)

In its first Report and Order regarding the implementation of non-accounting safeguards in Sections 271 and 272, the FCC recognized that before it could make any determination under Section 271 it must determine that the Bell Operating Company has complied with the safeguards imposed by Section 272. The FCC's first Report and Order stated:

"Under section 271, we must determine, among other things, whether the BOC has complied with the safeguards imposed by section 272 and the rules adopted herein." (FCC 96-489, p. 5, emphasis supplied.)

Before the FCC may even approve Ameritech Michigan's application under Section 271, it must make a determination that Ameritech has complied with the safeguards imposed by Section 272 and its implementing rules.

Yet, the FCC rulemaking with respect to Section 272 is incomplete. The FCC has issued a further notice of proposed rulemaking with respect to the information reporting requirements under Section 272(e)(1) of the Federal Act. (47 USC § 272(e)(1).) Such rules

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are necessary to insure that the Bell Operating Company is fulfilling the requests from unaffiliated entities for telephone exchange service and exchange access within a period no longer than the period in which it provides such services and access to itself or to its affiliates. Id.

The FCC admits that in order to effectively implement Section 272(e)(1), these reporting rules must be in place. The FCC stated:

" . . . that specific public disclosure requirements are necessary to implement section 272(e)(1) effectively.

\* \* \*

The statute imposes a specific performance standard on the BOCs in section 272(e)(1), and we conclude that, absent Commission action, the information necessary to detect violations of this requirement will be unavailable . . .

\* \* \*

In order to implement section 272(e)(1) effectively, we concluded that the BOCs must make publicly available the intervals within which they provide service to their affiliates. We concluded that, without this requirement, competitors will not have the information they require to evaluate whether the BOCs are fulfilling their requests for telephone exchange service and exchange access in compliance with section 272(e)(1)." (Id. Paragraphs 246, 362 and 368.)

Yet, these rules are not even promulgated. In fact, comments are not due on the FCC's proposed rules until February 19, 1997 and reply comments are not due until March 21, 1997. Thus, Ameritech Michigan's application for interLATA relief is premature because the information reporting requirements to allow the FCC to test whether Ameritech Michigan is in compliance with Section 272 are not even promulgated.

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**B. Approval Without Fully Implementing Section 272(e)(1) Is Ill-Advised Because Ameritech Michigan Has Repeatedly Demonstrated Its Willingness To Engage In Anticompetitive Conduct And Flout The Protections Set Forth In The MTA**

The public interest requires that, first the FCC promulgate all the rules regarding non-accounting safeguards so that it may test Ameritech Michigan's compliance with those safeguards before allowing Ameritech Michigan into the in-region interLATA market. After all, Ameritech Michigan has repeatedly violated provisions of the MTA and has engaged in anticompetitive conduct even in the face of statutory prohibitions and MPSC orders. Ameritech Michigan's conduct can only be expected to be even more abusive and anticompetitive if the FCC does not first fully implement all the informational reporting requirements and then test Ameritech Michigan's compliance with the Section 272 safeguards before allowing it into the in-region interLATA market.

For limited example, despite Section 308 of the MTA<sup>9</sup> which requires Ameritech Michigan to report all transactions with affiliates, Ameritech Michigan totally failed to report any transactions with its affiliates Ameritech Communications, Inc. ("ACI") and Ameritech NewMedia. Pursuant to a Freedom of Information Act request, MCTA asked the MPSC to produce all notices of Ameritech Michigan relating "to transfers, in whole or in part, of substantial assets, functions or employees associated with basic local exchange service to an affiliated entity." (See Exhibit 13.) In response to this Freedom of Information Act request, this Commission was able to produce only three instances where Ameritech Michigan provided notice. (See Exhibit 14.) These instances only included:

1. A letter dated August 5, 1993 announcing the roll-out of Ameritech's business units;

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<sup>9</sup>MCL 484.2308; MSA 22.1469(308).

2. A letter dated March 16, 1994 from Ameritech relating to a transfer of employees in its real estate division; and
3. December 13, 1994 filing with respect to Ameritech Michigan's request to transfer certain records outside the State of Michigan.

Thus, Ameritech Michigan has only on rare occasions informed the Commission of its transactions with affiliated entities.

This past limited reporting is cause for significant concern. With respect to ACI, the affiliate which will be providing in-region interLATA service, Ameritech never reported a \$90 million loan which was not reduced to writing and has no payment schedule. (Testimony of Patrick J. Earley, VP of Finance for ACI, MPSC Case No. U-111053, 4 Tr 455-456.) In fact, ACI readily admitted that it may share staff with Ameritech. (Direct Testimony of Ryan Julian, Director-Extended Affairs for ACI, MPSC Case No. U-11053, 4 Tr 560-61.) Currently, Ameritech Michigan acknowledged that ACI has over 484 employees. (Ameritech Michigan's FCC Compliance Brief, p 41.) If any of these employees were transferred from Ameritech, then reporting to the MPSC was required under Section 308 of the MTA.

Ameritech Michigan also has wholly failed to report the use of its vehicles and equipment in installing a cable television system for its affiliate, Ameritech NewMedia. As the affidavit and photographs of Chris Horak establish, Ameritech Michigan's trucks and equipment were clearly used by the affiliate, Ameritech NewMedia, to install its cable network. (See Exhibit 15.) Yet, Ameritech Michigan failed to report this affiliate transaction. Without such a report, it is impossible for the MPSC to determine whether Ameritech Michigan complied with the TSLRIC requirements set forth in Section 308 of the MTA. These examples under the MTA demonstrate that informational reporting requirements

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must be in place and utilized to test compliance with Section 272 before Ameritech is allowed in the interLATA market.

**V. THE MPSC SHOULD ADVISE THE FCC THAT IT IS NOT IN THE PUBLIC INTEREST AT THIS TIME TO ALLOW AMERITECH MICHIGAN TO ENTER THE IN-REGION INTERLATA MARKET**

Section 271 only mandates that the FCC consult with the MPSC with respect to Ameritech Michigan's compliance with the competitive checklist. Yet, there is no prohibition against further input, and it would be unwise for the MPSC to limit its consultation merely to the competitive checklist. In determining whether to grant Ameritech Michigan relief, the FCC must consider the public interest.<sup>10</sup> The MPSC is in a unique position to advise the FCC that the public interest is not served by allowing Ameritech Michigan interLATA relief at this time because of the lack of competition in the local telephone market and the significant impediments that new providers still face in attempting to penetrate Ameritech Michigan's local market. Until real competition takes hold, Ameritech Michigan should not be allowed into the interLATA market.

The general market conditions in Michigan do not justify allowing Ameritech Michigan to enter the in-region long distance market at this time. There simply is no competition, facilities-based or otherwise, in Michigan which offers any real competitive options for Michigan consumers. The few competing providers attempting to provide service to date, are still having significant difficulties with Ameritech Michigan. (See, Brooks Fibers January 7, 1996 filing with the MPSC.) Further, the informational reporting requirements to test Ameritech Michigan's compliance with the anticompetitive safeguards in Section 272

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<sup>10</sup>47 USC § 271(d)(3)(C).

remain unpromulgated. Thus, not only is there a lack of real competition, but all the safeguards designed to nurture competition are not yet even in place.

Also, it cannot be seriously disputed that the disparate treatment being imposed by municipal franchise ordinances is discriminatory and prevents competitively-priced local exchange services to be offered by facilities-based providers. (See Governor Engler's letter to Mayor of Romulus, Exhibit 12.) Even Ameritech Michigan recognizes that such local regulation is "a competition inhibitor." Until new providers are treated equally with Ameritech Michigan, it is not in the public interest to allow Ameritech Michigan to enter the in-region interLATA market because significant barriers exist with respect to others penetrating its market.

Once Ameritech Michigan is allowed into the in-region interLATA market, it will be able to immediately begin to provide those services. The public benefit of such market entry is limited because there are already numerous competitors in the long distance market. In comparison, those seeking to penetrate Ameritech Michigan's market face considerable obstacles and time delays rolling out their facilities to provide local telephone service. Yet, once Ameritech is allowed in the in-region interLATA market, it will lack any incentives to cooperate in allowing competition to come into existence. This public harm far outweighs any public good that may result from allowing Ameritech Michigan into an already competitive market.

## VI. CONCLUSION

Ameritech Michigan is not in compliance with the 14-item competitive checklist set forth in Section 271 because it has failed to satisfy item 3 which requires nondiscriminatory access to Ameritech Michigan poles and rights-of-way at just and reasonable rates. Based

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on the methodology adopted by the Michigan Legislature in Section 361 of the MTA<sup>11</sup>, the maximum allowable pole rate for Ameritech Michigan is \$1.20 per pole/per year. For some inexplicable reason, Ameritech Michigan has failed to support its \$1.97 pole rate tariff with any evidence in this proceeding. Even more troubling is the fact that Ameritech Michigan continues to attempt to collect a pole rate of \$2.88 and is dunning attaching parties, despite the MPSC's rejection of the \$2.88 tariff and Ameritech Michigan's withdrawal of the tariff and its tacit admission that this rate is excessive. Clearly, Ameritech Michigan is not providing access to its poles at just and reasonable rates.

Further, within the State of Michigan access to Ameritech Michigan's poles and rights-of-way is not available on a nondiscriminatory basis. Many local municipalities are imposing extensive regulations and franchise fees on new providers, but based on Ameritech Michigan's claimed exemption from such regulations, the same requirements are not being imposed on Ameritech Michigan. It cannot be seriously disputed that this disparate treatment is both discriminatory and a competition inhibitor. As a result of Ameritech's claim to preferential treatment, the checklist requirement for nondiscriminatory access is not satisfied in Michigan.

Additionally, Ameritech Michigan's request for interLATA relief based on Track A requires the existence of facilities-based competition for residential customers. Yet, Ameritech Michigan has made no showing that any residential customer is receiving service over loops owned and deployed by a competitor. In fact, the MPSC itself has recognized that there is no competition in the local telephone market, either facilities-based or not.

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<sup>11</sup>MCL 484.2361; MSA 22.1469(361).

Ameritech Michigan has shown less than 4,000 residential customers receiving service from a competing provider when it has over 3.2 million residential access lines.

In addition to failing to satisfy the competitive checklist and its prerequisites, Ameritech Michigan's entry into the in-region interLATA market is not in the public interest. If Michigan consumers are to benefit from deregulation in the telecommunications field, the regulators must ensure that there is real facilities-based competition for residential customers before allowing Ameritech Michigan to enter the in-region interLATA market. Once allowed into the interLATA market, Ameritech Michigan will not have the same incentives to ensure access to its bottlenecked facilities. As a result, premature entry by Ameritech Michigan will be disastrous because the incentives to ensure a competitive local market will no longer exist.

Also, Ameritech Michigan's request for interLATA relief should be rejected because Section 272, which establishes nonaccounting safeguards, has not been fully implemented. The information reporting requirements to ensure Ameritech's compliance with these safeguards have not yet been promulgated. Sound public policy should require that Section 272 be fully implemented and the informational reporting requirements be in place to test Ameritech Michigan's compliance before it is allowed into the in-region interLATA market.

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For these reasons, this Commission should find that Ameritech Michigan is not in compliance with the competitive checklist and advise the FCC that Ameritech Michigan's request for entry into the interLATA market should be rejected because it is not in the public interest at this time.

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Dated: January 9, 1997

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## Federal Communications Commission Record

FCC 87-209

Before the  
Federal Communications Commission  
Washington, D.C. 20554

CC Docket No. 86-212

In the Matter of

Amendment of Rules and Policies  
Governing the Attachment of Cable  
Television Hardware to Utility  
Poles

## REPORT AND ORDER

Adopted: June 10, 1987;

Released: July 23, 1987

By the Commission:

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## I. INTRODUCTION

1. On June 6, 1986, we released a Notice of Proposed Rule Making (NPRM) in CC Docket No. 86-212. *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*. The NPRM proposed to amend our rules and policies governing the attachment of cable television (CATV) hardware to poles owned or controlled by telephone or electric utilities. This Report and Order addresses those issues raised by the NPRM and the commenters in this proceeding.

## II. BACKGROUND

2. Congress mandated that the Commission ensure that the rates, terms, and conditions under which cable television operators attach their hardware to utility poles are just and reasonable (unless the state elects to assert such jurisdiction). 47 U.S.C. § 224. Sections 1.1401 through 1.1415 of the Commission's Rules, 47 C.F.R. §§ 1.1401-1.1415, were promulgated to implement Section 224. See *Adoption of Rules for the Regulation of Cable Television Pole Attachments*, CC Docket 78-144, *First Report and Order*, 68 FCC 2d 1585 (1978); *Second Report and Order*, 72 FCC 2d 59 (1979); *Memorandum Opinion and Order in CC Docket 78-144*, 77 FCC 2d 187 (1980), *aff'd*, *Monongahela Power Co. v. FCC*, 655 F.2d 1254 (D.C. Cir. 1981). Recently the United States Court of Appeals for the District of Columbia Circuit determined in *Alabama Power Company v. FCC*, 773 F.2d 362 (1985) (*Alabama Power*),<sup>1</sup> that the Commission's methodology did not result in the calculation of the maximum just and reasonable rate allowable under the Act and the Commission had not adequately explained its rationale. Accordingly, the NPRM offered proposed policy changes and revised rules for comment, pursuant to Sections 1.4(i), and 403 of the Communications Act, 47 U.S.C. §§ 151, 154(i), and 403.<sup>2</sup>

## A. Legislative History of Section 224

3. It has been common practice for cable television operators to lease space on utility poles in order to provide cable television service to a community. This arrangement was unregulated by any federal authority until the late 1970's, when Congress, in response to concern raised by the cable industry, enacted the Pole Attachment Act of 1978, Pub. Law No. 95-234, § 6, 92 Stat. 33, 35 (codified at 47 U.S.C. § 224). In Section 224 Congress established a range of just and reasonable pole attachment rates which "assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space . . . which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole . . ." 47 U.S.C. § 224(d)(1). To determine this just and reasonable pole attachment rate, Congress directed the Commission to "institute an expeditious program which will necessitate a minimum of staff, paperwork and procedures consistent with fair and efficient regulation." S. Rep. No. 95-580

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CALCULATIONS USING FERC FORM NO. 1 DATA

Net Cost of a Pole =  $\frac{\text{A/C 364 Gross Pole Investment} - \text{Depreciation Reserve (Poles)}}{\text{Number of Poles}}$   $\frac{\text{Accumulated Deferred Income Taxes (Poles)*}}{\text{Investment**}}$  - .15 of Net Pole Investment\*\*

Depreciation Expense =  $\frac{\text{Depreciation Rate for Gross Pole Investment} \times \text{Gross Pole Investment}}{\text{Net Pole Investment**}}$

Administrative Expense =  $\frac{\text{Total Administrative and General Expenses Gross Plant Investment} - \text{Depreciation Reserve} - \text{Accumulated Deferred Income Taxes (Electric Plant)***}}{\text{(Electric Plant)}}$

Maintenance Expense =  $\frac{\text{A/C 593 Investment in A/Cs 364 + 365 + 369} - \text{Depreciation in A/Cs 364 + 365 + 369}}{\text{Accumulated Deferred Income Taxes Related to A/Cs 364 + 365 + 369*}}$

Normalized Taxes (Expressed As a Percentage of Net Plant Investment) =  $\frac{\text{A/C (408.1 + 409.1 + 409.1 + 410.1 + 411.4) - 411.1}}{\text{Gross Plant - Depreciation Reserve - Deferred Income Taxes* (Total)***}}$

\* In the calculations using FERC Form No. 1 data and FCC Form M data, we are treating deferred taxes as most state commissions do - as a rate base deduction. If the state utility commission includes the reserve for deferred income taxes in the utility's capital structure at zero cost, we would not need to make any further adjustment. See paras. 42 to 48 and note 16, supra.

\*\* For purposes of these calculations Net Pole Investment equals Gross Pole Investment minus the Depreciation Reserve Related to Poles minus Accumulated Deferred Income Taxes Related to Poles.

\*\*\* For companies which have multiple operations, such as gas, electric and/or nuclear power, the Commission, in calculating the administrative expenses component, utilizes only the investment relating to electric operations. However, in the computation of the taxes component, the total gross plant investment of all of the company's operations is utilized. The taxes paid by the utility generally relate to its entire operations.

CALCULATIONS USING FCC FORM M DATA

Net Cost of a Bare Pole =  $\frac{\text{A/C 241 Gross Pole - Depreciation - Investment Reserve (Poles)}}{\text{Number of Poles}} \times \frac{\text{Accumulated Deferred Income - Taxes (Poles)*}}{\text{Investment**}}$

Depreciation Expense =  $\frac{\text{A/C 608 Depreciation Rate for Gross Pole Investment}}{\text{Gross Pole Investment}} \times \frac{\text{Net Pole Investment**}}{\text{Net Pole Investment**}}$

Administrative Expense =  $\frac{\text{Total Administrative and General Expenses}}{\text{Gross Plant - Plant Depreciation Reserve (Acct 171) Income Taxes (Plant) (Acct 176.1)*}}$

Maintenance Expense =  $\frac{\text{Account 602.1****}}{\text{Net Pole Investment**}}$

Normalized Taxes (Expressed

As a Percentage of Net Plant Investment) =  $\frac{\text{A/C (304 + 306 + 307 + 308.1 + 308.2) - 309}}{\text{Gross Plant - Plant Depreciation Reserve - Accumulated Deferred Income Taxes (Plant) (Acct 176.1)*}}$

\*\*\*\* This account relates directly to pole maintenance and no further calculation is necessary. See Group W Cable, Inc. v. Wisconsin Telephone Co., Mimeo No. 4474 (released May 30, 1984).

## Federal Communications Commission Record

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12, 199

Before the  
Federal Communications Commission  
Washington, D.C. 20554

LETTER  
June 22, 1990

Released: June 22, 1990

Mr. Paul Glist  
Cole, Raywid & Braverman  
Attorneys at Law  
Second Floor  
1919 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Dear Mr. Glist:

This is in response to your letter of December 20, 1989 which requested a response that would allow companies carrying pole attachment rentals to determine pole attachment carrying costs using Part 32 accounts reported in the Annual Report Form M.

You requested that we review your understanding of where the contents of certain Part 31 accounts are reported on the Federal Communications Commission Annual Report Form M. Annual Report Form M was revised on April 27, 1989 (DA 89-503, released May 12, 1989) to reflect the new accounting system in Part 32 (47 C.F.R. Part 32) that replaced the accounting system in Part 31 effective January 1, 1988.

Your letter also requested information on whether or not the contents of several apparently comparable Part 32 expense accounts now include more expenses than they previously included under Part 31. The Part 32 accounts for which you requested more specific information are discussed in the following paragraphs.

## Account 6411, Poles expense.

Account 6411 under Part 32 is comparable to Part 31 Account 602.1, Repair of pole lines, if the benefit component and rent component of the expense matrix are eliminated. Under Part 32, Account 6411 includes benefits previously included in Part 31 Account 672, Relief and pensions, social security and other payroll taxes previously recorded in Part 31 Account 307, Other operating taxes, and rents previously included in Part 31 Account 671, Operating rents. Account 602.1 generally matches with the sum of columns (ac) and (af) reported for Account 6411 on Annual Report Form M Schedule I-1.

In the formula prescribed in CC Docket 86-212, the benefit amounts reported in Annual Report Form M Schedule I-1 column (ad), would have been included as part of the numerator for the calculation of the administrative expense ratio and the social security and other payroll taxes also included in column (ad) would have been included in the numerator for the calculation of the normalized taxes ratio. The rents reported in column (ae) would have been included as part of the numerator for the calculation of the administrative expense ratio.

Account 6124, General purpose computers expense. Account 6724, Information management.

Your letter correctly notes that Part 31 did not provide separate accounts for computer expenses and that Part 32 includes expenses recorded in Account 6724 in the category of general and administrative expenses. Your letter is not correct in assuming that if one wishes to isolate the computing expenses a telephone utility incurs in general corporate overhead, one would look to Account 6724 only. Account 6124, as presently described in Part 32 does include some expenses that under Part 31 were included in general and administrative expenses. Expenses recorded in Account 6124 relate to assets recorded in Account 2124, General purpose computers, which by definition relate to general administrative information processing activities. (See 47 C.F.R. Sections 32.2124 and 32.5999 (b)). While we have conducted no formal analysis of this account it should not contain expenses associated with computers and related devices and software that perform switching, network signalling, network operations or plant specific equipment functions for which accounts have been provided (See 47 C.F.R. 32.2124 (d)).

## Account 6535, Engineering expense.

Under Part 31, expenses of general engineering departments were recorded initially in Account 705, Engineering expense and then cleared to other accounts on the basis of services rendered, as determined by the time devoted to particular jobs. The pay and expenses of supervisory personnel and other personnel engaged in clerical, reproduction and record work were also cleared to other accounts. Under Part 32, Account 6535 includes general engineering expense that is not directly chargeable to specific undertakings or projects. Under Part 32, engineering expenses directly related to poles would be recorded in Account 6411, Poles expense. As a result, a portion of Account 6535 would include the indirect expenses of supervisory personnel that under Part 31 would have been cleared to Part 31 Account 602.1, Repair of pole lines.

Account 6611, Product management. Account 6612, Sales. Account 6613, Product advertising. Account 6621, Call completion services. Account 6622, Number services. Account 6623, Customer services.

Under Part 31, the expenses recorded in Accounts 640 through 650, considered in the aggregate, generally track to Accounts 6611 through 6623 under Part 32, with the exception of connecting company relations expenses, which were recorded in Part 31 Account 644 that are now recorded in Account 6722 under Part 32.

## Account 6722, External relations.

Some of the expenses recorded in this account were not included in Accounts 661 through 677 under Part 31. These expenses include nonproduct related corporate image advertising and some expenses that were recorded in Account 644, Connecting company relations. The nonproduct related corporate image advertising portion of the expenses recorded in Account 6722 can be identified on Annual Report Form M Schedule I-6. There is no separate identification of the connecting company portion of expenses recorded in Account 6722 in the Annual Report Form M.

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Account 6726, Procurement.

Under Part 31, the expenses now recorded in Account 6726 were originally recorded in Account 704. Supply expense and then cleared to appropriate accounts including Accounts 661 through 677.

We have reviewed the attachment to your letter, which we have revised in light of the previous discussion and enclosed as an attachment to this letter.

If you have additional questions you may contact John T. Curry or Thaddeus Machcinski of my staff on (202) 634-1361.

Sincerely,

Kenneth P. Moran  
Chief, Accounting and Audits Division

Attachment

Par  
Acc

100

17

176

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60

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30

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6

## Public Data

## CALCULATION OF MAXIMUM POLE ATTACHMENT RATE

Ameritech Michigan

Year End 1995

Calculated by Paul Glist

Calculated: 8/23/96

Data Source

Net Investment Per Bare Pole	\$22.36	Calculated as indicated
Gross Investment in Pole Plant	\$73,528,725.00	See Data Entry
-Depreciation Reserve for Poles	\$57,503,860.00	See Data Entry
-Accumulated Deferred Taxes	\$5,806,262.64	See Data Entry
=Net Investment in Pole Plant	\$10,218,602.36	Calculated as indicated
-Net Investment in Appurtenances (5%)	\$510,930.12	Calculated as indicated
=Net Investment in Bare Pole Plant	\$9,707,672.24	Calculated as indicated
/Number of Poles	434,177	See Data Entry
=Net Investment per Bare Pole	\$22.36	Calculated as indicated

## CARRYING CHARGES

## Maintenance

Chargeable Maintenance Expenses	\$479,000.00	See Data Entry
/Net Investment in Pole Plant	\$10,218,602.36	See Module Above
=Maintenance Carrying Charge	4.69%	Calculated as indicated
Maintenance Expense for Bare Pole	\$455,050.00	Calculated as indicated

## Depreciation

Annual Depreciation Rate for Poles	5.70%	See Data Entry
Gross Investment in Pole Plant	\$73,528,725.00	See Module Above
/Net Investment in Pole Plant	\$10,218,602.36	See Module Above
=Gross/Net Adjustment	719.56%	Calculated as indicated
Deprec Rate Applied to Net Pole Plant	41.01%	Calculated as indicated
Depreciation Expense for Bare Pole	\$3,981,580.46	Calculated as indicated

## Administrative

Administrative Expenses	\$244,123,000.00	See Data Entry
Total Plant In Service	\$7,749,926,570.00	See Data Entry
-Depreciation Reserve for TPIS	\$3,604,827,895.00	See Data Entry
-Accumulated Deferred Taxes	\$611,980,000.00	See Data Entry
=Net Plant in Service	\$3,533,118,675.00	Calculated as indicated
Administrative Carrying Charge	6.91%	Calculated as indicated
Administrative Expense for Bare Pole	\$670,757.56	Calculated as indicated

## Taxes

Normalized Tax Expense	\$341,424,617.00	See Data Entry
Total Plant In Service	\$7,749,926,570.00	See Data Entry
-Depreciation Reserve for TPIS	\$3,604,827,895.00	See Data Entry
-Accumulated Deferred Taxes	\$611,980,000.00	See Data Entry
=Net Plant in Service	\$3,533,118,675.00	Calculated as indicated
Tax Carrying Charge	9.66%	Calculated as indicated
Tax Expense for Bare Pole	\$ 938,105.56	Calculated as indicated

## Return